IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.29 OF 2005

Sudhakar Bhojaya Shetty ..Petitioner

Vs.

Ganpatrao Sadashiv Madgulkar ..Respondent

Mr.S.A.Tawate for the petitioner

Ms.Geeta Mulekar for the respondent

CORAM : A.M.KHANWILKAR, J
DATED : 15TH JUNE, 2006

P.C.:

1. Heard the counsel for the parties. This petition is for initiating contempt proceeding against respondent no.1 and 2 for having violated the order passed by the Division Bench of this order dt.21.3.06 in Criminal Writ Petition No.901 of 2002. The said order reads as under:

> "Learned APP states that affidavit is filed in the above matter wherein it is stated that the FIR is registered, investigation is in progress and after completion of the investigation, charge-sheet

> will be filed before the JMFC, Vasai. This statement is accepted and recorded. Counsel for the petitioner therefore, does not press this petition, petition disposed of accordingly.
>
> Parties to act on an ordinary copy of this order duly authenticated by Sheristedar of this Court."

2. It is seen from the record that subsequently after investigation was completed and the police intended to file report, the Division Bench in its order dt.17.8.05 in Criminal Application NO.1667 of 2004 in Criminal Writ Petition No.901 of 2002 made the following observations:

> "5. Present Application filed by the State is only seeking clarification in view of the further development. If at all the statement of the APP was recorded that charge sheet will be filed it was on the assumption that some case is made out on the basis of the FIR, but when after investigation no such case sufficient to file charge sheet is made out and to the contrary it is revealed that the complaint filed by the respondent is false, the Applicants - State cannot be prevented from filing B-Summary. Therefore, this application is allowed, as prayed. B-summary to be filed within one week from today before the concerned Magistrate. After the B-Summary is filed, before passing any final orders, the Magistrate will issue notice

upon the Respondent through his Advocate Mr.S.A.Tawate, having address at 21, Jenabai Building, 2nd Floor, Dadasaheb Phalke Road, Dadar (East), Mumbai 400 014.

3. Also it is seen from the record that after the clarification given by the Division Bench, the investigating officer proceeded to file repot before the appropriate court. Thus, it is not a case of wilful disobedience of the order of the court.

4. The counsel for the petitioner however, submits that it has now come to the notice of the petitioner that the investigating officer has forced the witnesses to make statement. In other words, statements of witnesses have been obtained under coercion by the Investigating Officer and false report was created, which has been eventually filed in the court of JMFC, Vasai. It is not possible for this court to go into the controversy which is sought to be raised by the petitioner as the present proceeding is contempt petition for wilful disobedience of the order of the court.

5. It will be a case of over reaching the

court only if the allegation of the petitioner that the witnesses were forced to make statements is established. That enquiry will have to be undertaken only if the petitioner was to challenge the order of closing the proceeding, as passed by JMFC. In any case, those issues will have to be considered in appropriate proceedings. This petition is disposed of accordingly. At the instance of the counsel for the petitioner it is reiterated that observations made in this order will not influence the proposed proceeding to be resorted by the petitioner.